

### **REMARKS**

Claims 1-18 are pending in this patent application. By this response, claims 1-2, 6, 10 and 12-13 have been amended, claims 16-18 have been cancelled, and claims 19-23 have been added. Reconsideration of this patent application, as amended, is respectfully requested.

#### **Elections/Restriction**

Group 1, claims 1-15, were elected without traverse and claims 16-18, previously withdrawn, are now cancelled.

#### **Claims Pending in Patent Application But Not Included in Restriction**

Applicants have cancelled claims 16-18 which had previously been withdrawn from further consideration. However, the Applicants retain the right to file these claims in a continuation or divisional patent application.

#### **Drawing Objection under 37 CFR 1.121(d)**

The drawings were objected to by the Examiner as being blurry and indistinct. Drawings in compliance with 37 CFR 1.121(d) are required. A set of 9 replacement sheets as required by 37 CFR 1.121(d) are included herewith. Two additional sets of the 9 replacement sheets have been forwarded to the Official Draftsman under separate cover. The objection to the drawings as failing to comply with 37 CFR 1.121(d) is

believed to be overcome and the removal of the objection to the drawings as failing to comply with 37 CFR 1.121(d) is respectfully requested.

### **Specification**

The abstract of the specification was objected to by the Examiner because it exceeded 150 words in length. The abstract of the specification was amended to provide an abstract that does not exceed 150 words in length. The objection to the specification because of informalities is believed to be overcome and the removal of the objection to the specification because of informalities is respectfully requested.

### **Claim Objections**

Claims 1-15 were objected to by the Examiner because of informalities in that the words “shaft” and “bracket” were alleged to be indistinct. Claims 1-2, 6, 10, and 12-13 have been amended to change “shaft” to “frame shaft” and to change “bracket” to “bearing bracket.” The objection to claims 1-15 because of informalities is believed to be overcome and the removal of the objection to claims 1-15 because of informalities is respectfully requested.

### **Claim Rejection under 35 U.S.C. § 102**

#### **Claims 1-3, 5, 6 and 9 Rejected Under 35 USC §102(b) To Wilson**

Claims 1-3, 5, 6 and 9 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,919,195 to Wilson et al. (hereinafter “Wilson”). Arguments are

provided below in response to this rejection. Reconsideration of the rejection of claims 1-3, 5, 6 and 9, in light of the arguments provided below, is respectfully requested.

Discussion Regarding Patentability Of Currently Amended Claim 1 and Claims 2-3, 5, 9 and 9 Dependent Thereon

1. Wilson does not disclose the cutter is received in the mount at the first angle and the axis of the drive shaft forms a second angle with the longitudinal axis being less than the first angle as called for in amended claim 1.

Firstly, the Examiner has cited FIG. 5A of Wilson for the proposition that Wilson discloses the cutter is received in the mount at the first angle and the axis of the drive shaft forms a second angle with the longitudinal axis being less than the first angle (Office Action at page 5). According to claim 1, the first angle is the angle between the cutter and the longitudinal axis and the second angle is the angle between the drive shaft and the longitudinal axis. Please note that according to FIG. 5A of Wilson, the cutter and the drive shaft of the reaming system 100 of Wilson have collinear axes of revolution, such that the first angle and the second angle in FIG. 5A are identical. Therefore the first angle and the axis of the drive shaft 104 of Wilson can not form a second angle with the longitudinal axis being less than the first angle as required in claim 1.

Accordingly, Wilson does not disclose the cutter is received in the mount at the first angle and the axis of the drive shaft forms a second angle with the longitudinal axis being less than the first angle, as recited in claim 1.

2. The Claims Have Been Clarified

Claim 1, as currently amended, recites the following limitations:

wherein the drive shaft is coupled to the cutter to form the drive joint, the cutter is received in the mount at the first angle and the axis of the drive shaft forms a second angle with the longitudinal axis, the second angle being less than the first angle

The reaming system 100 in Wilson does not possess a configuration in which “the cutter is received in the mount at the first angle and the axis of the drive shaft forms a second angle with the longitudinal axis, the second angle being less than the first angle.”

Please note that according to FIG. 5A of Wilson, the cutter and the drive shaft of the reaming system 100 of Wilson have collinear axes of revolution, such that the first angle and the second angle in FIG. 5A are identical. Therefore the first angle and the axis of the drive shaft 104 of Wilson can not form a second angle with the longitudinal axis being less than the first angle as required in claim 1, as now amended.

Anticipation under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Since Wilson does not disclose each and every element of Applicant’s claim 1 as amended, Wilson does not anticipate claim 1. Therefore, the rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by Wilson is thereby believed to be overcome. Claims 2-3, 5, 6 and 9 depend on claim 1 and are thus believed to be allowable for, at least, the reasons set forth above with respect to amended claim 1.

The rejection of claims 1-3, 5, 6 and 9 under 35 U.S.C. 102(b) as being as being anticipated by Wilson is believed to be overcome and the removal of the rejection of

claims 1-3, 5, 6 and 9 under 35 U.S.C. 102(b) as being anticipated by Wilson is hereby requested.

Claims 10-12, 14 and 15 Rejected Under 35 USC §102(b) To DeCarlo

Claims 10-12, 14 and 15 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,540,694 to DeCarlo, Jr. et al. (hereinafter "DeCarlo"). Arguments are provided below in response to this rejection. Reconsideration of the rejection of claims 10-12, 14 and 15, in light of the arguments provided below, is respectfully requested.

Discussion Regarding Patentability Of Currently Amended Claim 10 and Claims 11-12, 14 and 15 Dependent Thereon

1. DeCarlo does not disclose a cutter disposed at an acute angle relative to the longitudinal axis, the drive shaft being disposed at an angle relative to the longitudinal axis less than the acute angle.

Firstly, the Examiner has cited FIG. 4 of DeCarlo for the proposition that DeCarlo discloses the drive shaft being disposed at an angle relative to the longitudinal axis less than the acute angle (Office Action at page 6). According to claim 10, the frame is configured to carry a cutter disposed at an acute angle relative to the longitudinal axis, the drive shaft being disposed at an angle relative to the longitudinal axis less than the acute angle. Please note that according to FIG. 4 of DeCarlo, the cutting surface 78 and the shaft 80 of the cutting means 22 of DeCarlo have collinear axes of revolution, such that the acute angle and the angle in FIG. 4 are identical. Therefore the carrying means 24 and

the cutting means 22 of DeCarlo can not have the drive shaft being disposed at an angle relative to the longitudinal axis less than the acute angle are required in claim 10.

Accordingly, DeCarlo does not disclose a cutter disposed at an acute angle relative to the longitudinal axis, the drive shaft being disposed at an angle relative to the longitudinal axis less than the acute angle as recited in claim 10.

## 2. The Claims Have Been Clarified

Claim 10, as currently amended, recites the following limitations:

said frame configured to carry a cutter disposed at an acute angle relative to the longitudinal axis, the drive shaft being disposed at a drive shaft angle relative to the longitudinal axis less than the acute angle and the drive shaft being configured at one end to couple to and drive the cutter

The surgical instrument 20 of DeCarlo does not possess a configuration in which “a cutter [is] disposed at an acute angle relative to the longitudinal axis, the drive shaft being disposed at a drive shaft angle relative to the longitudinal axis less than the acute angle” as required in claim 10 as currently amended. The cutting surface 78 and the shaft 80 of the cutting means 22 of DeCarlo have collinear axes of revolution, such that the acute angle and the drive shaft angle in FIG. 4 are identical. Therefore the surgical instrument 20 of DeCarlo can not have the drive shaft being disposed at a drive shaft angle relative to the longitudinal axis less than the acute angle as required in claim 10, as now amended.

Anticipation under 35 U.S.C. § 102 is proper only if the prior art reference discloses each and every element of the claim. Since DeCarlo does not disclose each and every element of Applicant’s claim 10 as amended, DeCarlo does not anticipate claim 10.

Therefore, the rejection of claim 10 under 35 U.S.C. 102(b) as being anticipated by DeCarlo is thereby believed to be overcome. Claims 11-12, 14 and 15 depend on claim 10 and are thus believed to be allowable for, at least, the reasons set forth above with respect to amended claim 10.

The rejection of claims 10-12, 14 and 15 under 35 U.S.C. 102(b) as being anticipated by DeCarlo is believed to be overcome and the removal of the rejection of claims 10-12, 14 and 15 under 35 U.S.C. 102(b) as being anticipated by DeCarlo is hereby requested.

### **Claim Rejections – 35 USC § 103**

#### **Claims 4, 7 and 8 Rejected Under 35 USC §103(a) To Wilson In View Of Richelsoph**

Claims 4, 7 and 8 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,919,195 to Wilson et al. (hereinafter “Wilson”) in view of U.S. Patent 5,342,363 to Richelsoph (hereinafter “Richelsoph”). Reconsideration of the rejection of claims 4, 7 and 8 is respectfully requested.

Claims 4, 7 and 8 depend directly or indirectly on amended claim 1. As a result, each of claims 4, 7 and 8 are allowable for, at least, the reasons hereinbefore discussed with regard to amended claim 1.

#### **Claim 13 Under 35 USC §103(a) To DeCarlo In View Of Halpern**

Claim 13 was rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 5,540,694 to DeCarlo, Jr. et al. (hereinafter “DeCarlo”) in view of U.S. Patent

5,468,243 to Halpern (hereinafter "Halpern"). Reconsideration of the rejection of claim 13 is respectfully requested.

Claim 13 depends directly or indirectly on amended claim 10. As a result claim 13 is allowable for, at least, the reasons hereinbefore discussed with regard to amended claim 10.

### **NEW CLAIMS 19- 23**

#### **Discussion Regarding Patentability of New Claims 19-23**

##### **New Independent Claim 19**

Claim 19 recites the following limitation:

a drive shaft having an axis, a proximal end configured for coupling to a drive means and a distal end configured to form a portion of a universal coupling for coupling the drive shaft to a cutter;

Neither the device of Wilson nor the device of DeCarlo possesses a universal coupling for coupling the drive shaft to a cutter as required in new claim 19. The drive shaft and the cutter of Wilson and DeCarlo are collinear. Further, neither the device of Richelsoph nor that of Halpern possesses a universal coupling as both have cutters and drive shafts that are collinear. As such, applicants believe that claim 19 is novel and non-obvious over the prior art.

Claims 20-23 are dependent on new claim 19 and are thus also believed to be novel and non-obvious over the prior art.

Support for claims 19-23 can be found in FIGS. 1-3, 5, and 14-16 and the discussions thereof, as well as, elsewhere in the drawings and specification including paragraphs 35, 38, and 60-61.

**Conclusion**

A prompt and favorable action on the merits is respectfully requested.

Respectfully submitted,

MAGINOT, MOORE & BECK LLP

/John S. Wagley/

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John S. Wagley  
Attorney for Applicants  
Registration No. 36,043

October 19, 2007  
Maginot, Moore & Beck  
Chase Tower  
111 Monument Circle, Suite 3250  
Indianapolis, Indiana 46204-5109

**Amendments to the Drawings:**

The Office Action Dated July 19, 2007 indicated that the drawings were objected to as failing to comply with 37 CFR 1.121(d) and that new corrected drawing in compliance with 37 CFR 1.121(d) are required. One set of corrected drawings (9 sheets) are attached hereto and two sets have been sent to the Official Draftsman under separate cover.